Remarks

Rejection of Claims and Traversal Thereof

In the March 11, 2008 Office Action:

claims 1-3, 15-17 and 43 were rejected under 35 U.S.C. §112, first paragraph.

This rejection is hereby traversed and reconsideration of the patentability of the pending claims is therefore requested in light of the following remarks.

Rejection under 35 U.S.C. §112, first paragraph

Claims 1-5, 7-11, 54-62 and 64 were rejected under 35 U.S.C. §112, first paragraph because the Office believes that the specification fails to comply with the enablement requirement.

Notably, the Office has the burden of giving reasons, supported by the record as a whole, why the specification is not enabling. Showing that the disclosure entails undue experimentation is part of the Office's initial burden. *In re Angstadt*, 190 USPQ 214 (CCPA 1976). Only when the Office meets this burden, does the burden shift to applicants to provide suitable evidence indicating that the specification is enabling in a manner commensurate in scope with the protection sought by the claims. *In re Marzocchi*, 169 USPQ 367 (CCPA 1971).

According to the Office:

> " the specification teaches feeding *Crypthocodinium sp.* However, the specification does not teach whether this species of algae results in an increase in DHA to at least 12.5ug/g of fresh weight"

Applicants disagree because it is very evident that both Examples 1 and 10 provide such evidence. Initially it should be noted that the test shrimp were fed AquaGrow DHA in combination with the Ziegler shrimp diet as described in Example 10. One skilled in the art can easily purchase the AquaGrow DHA product which is clearly produced by the *Crypthocodinium sp* as shown below:

DHA

Docosahexaenoic Acid

Highly stable source of Omega-3 DHA from microalgae

AquaGrow® DHA is composed of spray-dried algal extract that is high in Omega-3 DHA. It is a product of the heterotrophically grown alga, *Crypthecodinium*, a natural aquatic food source. The alga is cultivated in a GMP-regulated facility to ensure its quality, consistency, and safety.

- Clean, sustainable source of Omega-3 DHA
- Contains min. 15% DHA by weight
- Suitable for use as an ingredient in larval rearing and broodstock maturation diets
- Average 100 micro-particle size
- Long shelf-life at ambient temperatures
- Maintains stability through extrusions and other high-temperature feed manufacturing processes
- Blends well with other ingredients
- Made in the USA

TYPICAL ANALYSIS

Proximate Composition	%
Fat	35.0
Protein	13.0
Carbohydrate	23.0
Moisture	5.0
Fiber	1.0
Ash	23.0

Vitamins and Pigments	Units
Vitamin A (IU/kg)	2117.2
Vitamin C (ppm)	250.0
Vitamin E (ppm)	49.8
Carotene (ppm)	4.2
Xanthophyll (ppm)	6.9

Major Minerals	%
Calcium	0.11
Chloride	0.52
Magnesium	0.12
Phosphorus	0.69
Potassium	0.47
Sodium	3.40
Sulfur	0.12

Major Fatty Acids	% of Fat
12:0 Lauric	2.9
14:0 Myristic	10.9
16:0 Palmitic	14.1
18:1 Oleic	14.8
18:2 Linoleic	2.7
20:5 EPA	0.0
22:5 DPA	0.0
22:6 DHA	45.0

Trace Minerals	ppm
Cobalt	<0.1
Copper	5.0
Iodine	1.5
Iron	73.0
Manganese	10.0
Zinc	57.0

Amino Acid Profile	% of Protein
Alanine	8.0
Arginine	4.4
Aspartic Acid	10.1
Cysteine	1.1
Glutamic Acid	15.5
Glycine	5.3
Histidine	2.1
Hydroxyproline	0.7
Isoleucine	4.7
Leucine	8.9
Lysine	6.0
Methionine	1.7
Phenylalanine	3.7
Proline	4.9
Serine	5.2
Threonine	4.4
Tryptophan	2.6
Tyrosine	5.9
Valine	4.7

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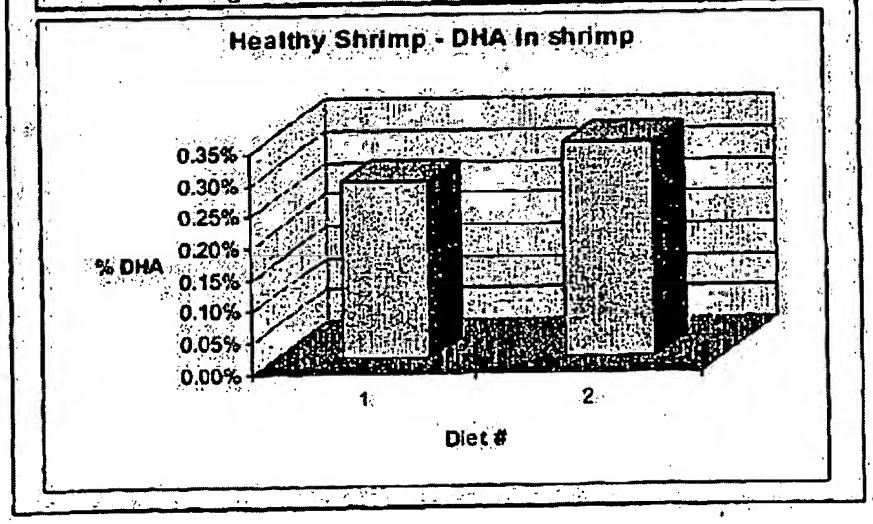
Thus, one reading the specification on page 13, Example 1, it is very clear that one skilled in the art could feed the AquaGrow supplement as a Finishing Feed. Further, one skilled in the art would know the

amount to add to the culture tank depending on the size and number of shrimp within the tank. This is no different from a child learning how much to feed their pet fish in the fish tank. As stated in Example 13, after 14 days of using such finishing feed, a 150 mg sample of the shrimp was analyzed to determine the amount of DHA in such a fresh weight sample. The sample was easily tested by using a well known gas chromatography test that is not only described in the present application but also in US Patent No. 6,372,460 (contents were incorporated by reference). The results of the amount of DHA in that 150 mg sample of fresh shrimp is set forth in Table 2, and recreated below:

Diet 1 - Ziegler Control diet SI -35 with Fish oil					
	1	0.36%			
	2	0.18%			
	Average -->	0.28%			
Diet 2 – Ziegler SI-35 Diet with Algal DHA replacing Fish oil fraction					
	1	0.53%			
	2	0.18%			
	Average -->	0.34%			



By doing the simple math and using the 0.34% value in combination with the 150 mg of shrimp sample, the results of Example 10 provides for 510ug of DHA/g of fresh weight of shrimp as shown below:

Noting that 150 mg = 0.15g of shrimp and 0.34% =0.0034;

0.0034 DHA in shrimp x 0.15g of shrimp = 0.00051 g of DHA

0.00051 g of DHA is equal to 510 ug of DHA

Applicants remind the Office that some experimentation may be required as long as it is not undue. In *PPG Indus., Inc., v. Guardian Indus. Corp.*, 27 USPQ2d 1618, 1623 (Fed. Cir. 1996), the court stated that even where some experimentation is necessary to reduce an invention to practice, the enablement requirement is satisfied where: (1) the experimentation is routine; or (2) the specification provides "a reasonable amount of guidance with respect to the direction in which the experimentation should proceed to enable the determination of how to practice a desired embodiment of the claimed invention." Applicants' specification meets these requirements. Clearly any experiments to determine the amount of DHA is routine and there is reasonable guidance in this application to proceed.

The disclosure is sufficient to enable those skilled in the art to practice the claimed invention, and the specification need not disclose what is well known in the art. *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481 (Fed. Cir. 1984). Further it has been consistently held by the courts that the first paragraph of 35 USC §112 requires nothing more than objective enablement. In satisfying the enablement requirement, an application need not teach, and preferably omits, that which is well-known in the art. The error of the Office's approach is that there seem to be a requirement that the specification be a blueprint for applicants'claimed invention. However, the law does not require a specification to be a blueprint in order to satisfy the requirement for enablement under 35 USC §112, first paragraph as stated by this Board in *Staehelin v. Secher*, 24 USPQ2d 1513 (B.P.A.I. 1992) citing *In re Gay*, 135 USPQ 311 (C.C.P.A. 1962) "Not every last detail is to be described, else patent specifications would turn into production specifications, which they were never intended to be."

Applicants request that the Office reconsider this rejection under section 112 and find that the specification is indeed enabling and withdraw this rejection.

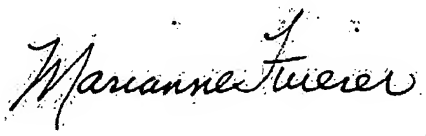
Petition for Extension and Fees Payable

Applicants petition for a three month extension to extend the response due date of June 11, 2008 to September 11, 2008 and the petition fee is being paid herewith by electronic transfer. Applicants have filed herewith a Request for Continued Examination with a fee due of $405.00 which is also being paid herewith by electronic transfer. If any additional fee is found due for entry of this amendment, the Commissioner is authorized to charge such fee to Deposit Account No. 13-4365 of Moore & Van Allen.

Conclusion

Applicant has satisfied the requirements for patentability. All pending claims are free of the art and fully comply with the requirements of 35 U.S.C. §112. It therefore is requested that Examiner Bertoglio reconsider the patentability of the pending claims in light of the distinguishing remarks herein, and withdraw all rejections, thereby placing the application in condition for allowance. If any issues remain outstanding incident to the allowance of the application, Examiner Bertoglio is requested to contact the undersigned attorney at (919) 286-8089.

Respectfully submitted,



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